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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
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Working Group on Indigenous Populations
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STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS PEOPLES

Compilation of general recommendations from human rights treaty bodies referring to indigenous peoples

Note by the Secretariat

Introduction

1. In recent years representatives of indigenous peoples' organizations and communities have expressed interest in how they might avail themselves of the existing conventional mechanisms protecting human rights. Informal briefings by the staff members of the Office of the High Commissioner for Human Rights responsible for the different treaty bodies and by expert members of the treaty bodies themselves have been organized during the annual sessions of the Working Group on Indigenous Populations to familiarize indigenous peoples with these mechanisms. In order to assist further an understanding of the developing jurisprudence relating to indigenous issues occurring through the treaty process, the Secretariat has prepared the present note containing extracts of general recommendations of the human rights treaty bodies (a) referring directly to indigenous peoples, and (b) pertaining to issues of importance for indigenous peoples.

GE.98-12817 (E)

2. The human rights bodies may have adopted other general recommendations of interest and relevance to indigenous peoples than the selected recommendations and extracts contained within this document.

3. The United Nations has six major human rights treaties. These are monitored by treaty bodies that are made up of experts elected by States parties because of their expertise in that field, and who do not represent the country from which they come. The treaty bodies are serviced by the Office of the High Commissioner of Human Rights in Geneva, except for Committee on the Elimination of Discrimination against Women (CEDAW) which is administered by the Division for the Advancement of Women at Headquarters. A list of the State parties to each of the Conventions and Covenants can be found in *The Chart of Ratifications as at 31 December 1997* (ST/HR/4/Rev.16).

4. The treaty bodies and respective treaties are:

(a) **Committee against Torture** (CAT) monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entering into force on 26 June 1987. The Committee consists of 10 experts. As at 31 December 1997, the Convention had been ratified or acceded to by 104 States. Under article 22 of the Convention, individuals can submit communications on the merits of a case. Forty States recognize this competence;

(b) **Committee on the Elimination of Discrimination Against Women** (CEDAW) monitors the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly in resolution 34/180 of 18 December 1979 and entering into force on 3 September 1981. The Committee has a membership of 23 experts. As at 31 December 1997, 161 States had ratified or acceded to the Convention. Unlike the other treaty bodies, CEDAW is based at the United Nations Headquarters in New York;

(c) **Committee on the Elimination of Racial Discrimination** (CERD) monitors the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in resolution 2106 A (XX) of 21 December 1965 and entering into force on 4 January 1969. The Committee has a membership of 18 experts. As at 31 December 1997, 150 States had ratified or acceded to the Convention. Under article 14 of the Convention, individuals can submit communications for examination on the merits of the case. Twenty-four States recognize this competence;

(d) **Committee on the Rights of the Child** (CRC) monitors the Convention on the Rights of the Child, adopted by the General Assembly in resolution 44/25 of 20 November 1989 and entering into force on 2 September 1990. The Committee has 10 expert members. As at 31 December 1997 there were 191 States parties to the Convention. Article 30 of the Convention, which specifically addresses the rights of indigenous children, states that "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in

community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language". Article 30 follows the wording of article 27 of the International Covenant on Civil and Political Rights but also contains important new elements: it specifically mentions the rights of the indigenous child. It should be noted that other provisions of the Convention also explicitly protect the rights of indigenous children, for example, article 17 (d), which calls on States to "encourage the mass media to have particular regard to the linguistic needs of the child who ... is indigenous" and article 29 (d) which, inter alia, promotes, among the aims of education, the preparation of the child for responsible life in a spirit of understanding and friendship among all people, including persons of indigenous origin. Likewise, article 20, paragraph 3, stresses the need to pay due regard to the child's ethnic, religious, cultural and linguistic background when deciding on measures of alternative care for children deprived of family environment, as a means of ensuring continuity in the child's upbringing. Article 8 addresses the question of the identity of the child, emphasizing the importance of preserving the elements of such identity, which are clearly not to be limited to the child's nationality, name and family relations. Finally, the Committee on the Rights of the Child has consistently taken into account the general principles of non-discrimination (art. 2), best interests of the child (art. 3), right to life, survival and development (art. 6) and participatory rights (art. 12) when dealing with issues relevant to indigenous children in the framework of its monitoring activities;

(e) **Human Rights Committee** (HRC) monitors the International Covenant on Civil and Political Rights adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1976 and entering into force on 23 March 1976. The Committee has a membership of 18 experts. As at 31 December 1997, 140 States had ratified or acceded to the Covenant. The Committee has also established an individual complaints procedure under the Optional Protocol, which has 93 States parties. Article 27 specifically addresses the rights of minorities and has been used by indigenous persons.

(f) **Committee on Economic, Social and Cultural Rights** (CESCR) the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and entering into force on 3 January 1976. The Committee is composed of 18 experts. As at 31 December 1997, 137 States had ratified or acceded to the Covenant.

5. The human rights treaty bodies are responsible for reviewing the compliance of States parties with the respective treaties. All States parties are obliged to submit periodic reports on their implementation of the relevant treaties.

6. In addition, treaty bodies have developed a practice of giving general recommendations that address issues of particular concern.

7. As noted above, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture all have mechanisms to deal with complaints made by individuals under the provision of an optional

protocol (in the case of Covenant), or in the convention itself (articles 14 and 22 of the respective convention). For the committees to have this power, the State concerned must have accepted this complaints mechanism.

I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

A. Extract of General Recommendation XXIII (51) on the rights of indigenous peoples

8. The General Recommendation was adopted at the 1235th meeting of CERD on 18 August 1997 (A/52/18, annex V)

"...

"2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous Peoples commencing on 10 December 1994, reaffirms the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

"3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against, deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently the preservation of their culture and their historical identity has been and still is jeopardized.

"4. The Committee calls in particular upon States parties to:

"(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

"(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

"(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

"(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent;

"(e) Ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs, to preserve and to practice their languages.

"5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."

B. Extract of General Recommendation XXI (48) on the right to self-determination

9. The General Recommendation was adopted at the 1147th meeting of CERD on 8 March 1996 (A/51/18, Annex VIII)

"...

"9. In respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation."

C. General Recommendation VIII (38) concerning self-identification

10. The General Recommendation was adopted at the 884th meeting of CERD on 21 August 1990 (A/45/18, chap. VII).

"The Committee on the Elimination of Racial Discrimination,

"Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic group or groups,

"Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned."

II. HUMAN RIGHTS COMMITTEE

A. Extract of General Comment 23 (50) concerning ethnic, religious and linguistic minorities

11. The General Comment was adopted at the 1314th meeting of the Committee held on 6 April 1994 (A/49/40, annex V).

"...

"3.2. The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.

"...

"7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

"...

"9. The Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end.

C. Extract of general comment 22 (48) on freedom of religion

12. The General Comment was adopted at the 1247th meeting of the Committee on 20 July 1993 (A/48/40, Annex VI).

"...

"4. The freedom to manifest religion or belief may be exercised 'either individually or in community with others and in public or

private'. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications."

III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Extract of General Comment 7 on the right to adequate housing: forced evictions

13. The General Comment was adopted at the sixteenth session of the Committee on 20 May 1997 (E/C.12/1997/4).

"...

"11. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved."